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Supreme Court of the United States.

No. 437 October Term, 1953.

WILLIAM F. WALL,
Petitioner,

v.

RUDOLPH F. KING,
Respondent.

ON JURISDICTION OF THE DISTRICT COURT.

PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

GEORGE P. LORDAN,
Attorney for Petitioner.

Herbert E. Tucker, Jr.,
Michael Carchia,
Cordozo, Lordan, Katz & Tucker,
Of Counsel.

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Supreme Court of the United States.

No. October Term, 1953

WILLIAM F. WALL,
Appellant, Petitioner,

v.

RUDOLPH F. KING,
Appellee, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT AND SUPPORTING BRIEF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, by George P. Lordan, his attorney, prays that a Writ of Certiorari issue to review an order of the United States Court of Appeals for the First Circuit rendered July 31, 1953. The order referred to affirms the judgment of the United States District Court, District of Massachusetts which allowed the defendant's motion to dismiss the complaint of the petitioner.

Jurisdiction.

The basis of Jurisdiction 8 U.S.C. section 43 and 28 U.S.C. 1343 (3) and 1331.

Summary Statement of Matters Involved.

Complaint

(Filed July 16, 1952)

1. The plaintiff, William F. Wall is a citizen of the United States and is a resident of Arlington, County of Middlesex, Commonwealth of Massachusetts.

2. The plaintiff brings this action under Section Forty-three (43) of Chapter Three (3) of Title Eight (8) of the United States Code.

3. The defendant, Rudolph F. King, of Millis, County of Norfolk was and is the Registrar of Motor Vehicles of the Commonwealth of Massachusetts.

4. On July 31, 1951 in utter and complete disregard and violation of the constitutional and legal rights, privileges and immunities and guarantees of the plaintiff, the defendant King in his capacity as Registrar of Motor Vehicles, did without a hearing suspend the license of the plaintiff to operate a motor vehicle upon the roads of the Commonwealth of Massachusetts.

5. By virtue of the suspension order the plaintiff did surrender his license to the defendant there and after was unable to operate a motor vehicle upon the public highways of the Commonwealth of Massachusetts and any other states having reciprocal rights with Massachusetts.

6. At the time the plaintiff was a salesman and did

need his license to operate motor vehicles and thereafter as a result lost his employment and also all those rights and privileges which attach themselves to the right to operate a motor vehicle.

7. Thereafter on August 9, 1951 the plaintiff did apply to the defendant for a reissuance of his license which the defendant did deny.

8. Whereupon the plaintiff did take his case to the Courts of Massachusetts, and the Supreme Court, which is the highest court in that Commonwealth, did by decision dated May 29, 1952, hold that the defendant King, "Did act arbitrarily and did not have reason to believe that the licensee was operating improperly on July 7, 1951, and he, King, was therefore, not justified in suspending the Plaintiff's license", and ordered his license restored which was done on or about June 15, 1952.

9. By the action of the defendant which was illegal and in violation of the constitutional rights, privileges, immunities and guarantees of the Plaintiff and which was without due process of law, the plaintiff was deprived of his right to operate a motor vehicle within the Commonwealth of Massachusetts and in those states and commonwealths which extend reciprocal privileges to licensees from Massachusetts.

10. As a result of such illegal action of the said defendant, the plaintiff was deprived of the right to engage in an occupation which required a license to operate a motor vehicle and had to engage in laborious pursuits which paid less money and was caused to forego many social pursuits dependent upon one having a license to operate a motor vehicle, all to his great damage.

WHEREFORE, the plaintiff demands judgment against the

defendant in the sum of Ten thousand ($10,000.00) dollars and costs.

The plaintiff demands a trial by jury.

WILLIAM F. WALL,
By (s) CARDOZO, LORDAN, KATZ & TUCKER
By (s) GEORGE P. LORDAN
Attorneys for the Plaintiff
20 Pemberton Square
Boston 8, Mass.

Signed at Boston, Massachusetts
on this 16th day of July, 1952.

DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

[Filed August 16, 1952.]

Now comes the Defendant and moves to dismiss the case for failure to state a claim upon which relief can be granted, on the following grounds:

1. The allegations contained in the Plaintiff's Complaint as to the act or acts of the Defendant which are complained of are not within the meaning of Section 43 of Chapter 3 of Title 8 of the United States Code.

2. The granting or withholding of licenses to operators of motor vehicles is a method of exercise of the state's regulartory power over public highways in the interest of public safety, and the acts of the Registrar of Motor Vehicles in the performance of his duties cannot be the basis of a Complaint for a violation under the

provisions of Section 43 of Chapter 3 of Title 8 of the United States Code.

3. The rights, privileges and immunities, which Section 43 of Chapter 3 of Title 8 of the United States Code was designed to protect, are such as belong to citizens of the United States as such and not as citizens of the state in which they reside.

RUDOLPH F. KING,
By His Attorney,
(s) HENRY M. LEEN,
10 Post Office Square,
Boston 9, Mass.

On December 1, 1952, the foregoing motion to dismiss was heard by the Court (Ford, J.) and, after arguments, taken under advisement.

The Questions Presented.

1. Did the complaint set forth a violation of any rights, privileges, or immunities secured by the Constitution?
2. Does the complaint spell out a deprivation by the Action of the Registrar of Motor Vehicles of life, liberty or property without due process of law?
3. Does the complaint state a violation of the equal protection clause of the Fourteenth Amendment?

The Reasons Relied on For The Allowance of the Writ.

1. It is submitted that the complaint sets forth an abridgment of rights, privileges and immunities secured by the Constitution and possessed by the plaintiff as a

citizen of the United States. The right to operate a motor vehicle for one's livelihood is a right secured and protected by the Constitution of the United States.

2. It is contended that the complaint does spell out a deprivation of life, liberty or property without due process of law. The right to drive a motor vehicle from one place to another whether in pursuit of business or pleasure is a liberty within the Constitution which cannot be denied or curtailed without due process of law. The action by the Registrar of Motor Vehicles in suspending the license of the petitioner was without due process of law.

3. The complaint does state a case whereby the plaintiff was denied the equal protection of the laws.

BRIEF IN SUPPORT OF PETITION.

POINT I.

It is submitted that the complaint sets forth an abridgment of rights, privileges and immunities secured by the Constitution and possessed by the plaintiff as a citizen of the United States. The right to operate a motor vehicle for one's livelihood is a right secured and protected by the Constitution of the United States.

The right of a person to earn a livelihood is protected by the Constitution of the United States. The right of a lawyer to practice law is guaranteed by the Constitution.

Selling v. *Radford* 243 U.S. at 51.

When it is necessary to have a license to operate a motor vehicle to secure one's living, the fact that the granting of a license is within the police power of the State does

not wipe out the protection afforded by the Constitution of the United States. The right to operate a motor vehicle (once the regulations are complied with) is as fundamental as the right to use the mails, and both are incident to citizenship of the United States.

Walker v. *Popenac,* 80 U.S. App. D. C. 129 at 131.

When the Supreme Court of Massachusetts states that the Registrar was not justified in suspending Wall's license (as related in the complaint), then there is an abridgment of his Constitutional rights, and therefore the District Court for Massachusetts had jurisdiction of this complaint.

Wall v. *Registrar of Motor Vehicles,* 106 NE 2d 425.

POINT II.

It is contended that the complaint does spell out a deprivation of life, liberty or property without due process of law. The right to drive a motor vehicle from one place to another, whether in pursuit of business or pleasure is a liberty within the Constitution which cannot be denied or curtailed without due process of law. The action by the Registrar of Motor Vehicles in suspending the license of the petitioner was without due process of law.

The Circuit Court in its opinion given on July 31, 1953 states in part:

> "We have no doubt that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether

in pursuit of business or pleasure, is a "liberty" which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law".

Ex Parte Virginia 100 U.S. 339-346-349.

The Court then goes on and misquotes the plaintiff's claim. The Court stated that the essence of the plaintiff's claim seem to be that his license was suspended without a hearing. *This never was the plaintiff's claim.* The plaintiff has stated that the Registrar could not legally suspend his license for the reasons given in the notice of suspension. Therefore, it doesn't matter what the State can constitutionally do with respect to controlling operation of a motor vehicle after drinking intoxicating liquor. The fact is that in Massachusetts, driving after drinking is not forbidden. It is prohibited when the drinking influences the driving. Therefore, when the Supreme Court of Massachusetts properly declared that the Registrar was not justified in suspending the license of Wall, the Court had in mind what is forbidden and not what can be forbidden.

It is therefore submitted that the action of the Registrar was without due process of law, and the District Court for Massachusetts had jurisdiction of this complaint.

Mass. G.L. Ter Ed C 90 Section 24 (1) (a) (b)
Mass. G.L. Ter Ed C 90 Section 22

POINT III.

The complaint does state a case whereby the plaintiff was denied the equal protection of the laws.

The complaint shows clearly that the plaintiff was discriminated against. Nowhere can one find justification for

the action of the Registrar. His action from the start was void. He had no right to do what he did. In doing what he did in suspending the license of Wall, he deprived him of equal protection of the laws. Therefore, the District Court for Massachusetts had jurisdiction of this complaint.

Conclusion.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,
GEORGE P. LORDAN,
Attorney for Petitioner.

HERBERT E. TUCKER, JR.
MICHAEL CARCHIA,
CARDOZO, LORDAN, KATZ & TUCKER,
of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1953.

No. 437.

WILLIAM F. WALL,
Petitioner,

v.

RUDOLPH F. KING,
Respondent.

BRIEF OF RUDOLPH F. KING, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The respondent, Rudolph F. King, Registrar of Motor Vehicles for the Commonwealth of Massachusetts, files this brief in opposition to the prayer of the petition for a writ of certiorari to review an order of the United States Court of Appeals for the First Circuit rendered July 31, 1953, affirming the judgment of the United States District Court, District of Massachusetts, allowing the respondent's motion to dismiss the petitioner's complaint.

Opinions Below.

Opinion of the District Court.

The opinion and order of the District Court allowing the respondent's motion to dismiss is reported in 109 Fed. Supp. 198 (1952), and is reprinted in the appendix to this brief.

Opinion of the Court of Appeals.

The opinion of the United States Court of Appeals for the First Circuit, affirming the judgment of the District Court, is reported in 206 Fed. 878, and is reprinted in the record (pp. 11-20).

Jurisdiction.

The petitioner invokes the jurisdiction of this Court under United States Code, Title 8, section 43, and United States Code, Title 28, sections 143 (3) and 1331.

Statement of the Case.

The petition for certiorari and supporting brief set forth (on pages 2 to 4, inclusive) the petitioner's complaint filed in the United States District Court. The allegations of the complaint need not be repeated here. Briefly, the complaint alleges that it is brought under the provisions of section 43 of Title 8 of the United States Code to recover damages for an alleged deprivation of the petitioner's constitutional rights. It charges, in substance, that the respondent King, in his capacity as Registrar of Motor Vehicles of the Commonwealth of Massachusetts, on July

31, 1951, wrongfully suspended petitioner's license to operate a motor vehicle on the highways of Massachusetts and thereafter wrongfully denied an application of the petitioner for a reissuance of said license. The complaint then alleges that the Supreme Judicial Court of Massachusetts, by decision dated May 29, 1952 (*Wall* v. *Registrar of Motor Vehicles,* 329 Mass. 70; 106 N.E. (2d) 425—reprinted in full in the appendix at the conclusion of this brief), decided that the Registrar was not justified in suspending petitioner's license and that the petitioner was entitled to have his license reissued. The complaint further alleges that the respondent's action was in "violation of the petitioner's constitutional and legal rights, privileges and immunities and guarantees" and "was without due process of law" in that it deprived the petitioner "of his right to operate a motor vehicle within the Commonwealth of Massachusetts and in those states and commonwealths which extend reciprocal privileges to licensees from Massachusetts."

To this complaint the respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted. After hearing in the District Court, the motion to dismiss was allowed and a judgment for dismissal was entered on January 5, 1953. The petitioner thereupon filed an appeal to the United States Court of Appeals for the First Circuit; and on July 31, 1953, that Court affirmed the judgment of the District Court (R. 20).

The Questions Presented.

1. Does the petition for certiorari raise any special or important question for the determination of this Court?

2. Does the complaint set forth a violation of any rights, privileges or immunities secured by the Constitution?

3. Does the complaint spell out a deprivation by the action of the Registrar of Motor Vehicles of life, liberty or property without due process of law?

4. Does the complaint state a violation of the equal protection clause of the Fourteenth Amendment?

Argument.

I.

THE DECISION OF THE UNITED STATES COURT OF APPEALS RAISES NO QUESTION SO SPECIAL OR IMPORTANT AS TO REQUIRE THE GRANTING OF CERTIORARI.

Certiorari will be granted only when there are special and important reasons for review; and no such question is presented by this petition requiring review by this Court. The decision of which review is sought here is not in conflict with the decision of any other United States Court.

The respondent respectfully invites the Court's attention to the fact that the Registrar of Motor Vehicles for the Commonwealth of Massachusetts is cloaked with broad and far-reaching discretionary powers. These were purposely given to him by the Legislature for the purpose of promoting the public safety. More than a million pleasure cars, to say nothing of cars registered exclusively for business use, are registered each year in the Commonwealth of Massachusetts. The Registrar is charged with the responsibility of safeguarding the lives and welfare of millions of motorists and pedestrians. Many thousands of notices are sent each year from the office of the Registrar to persons licensed to operate motor vehicles in the Commonwealth. At times the Registrar must necessarily act upon information furnished him by others. The information upon which he acts may at times turn out to be erroneous,

but the incidental hardship upon an individual motorist in having his license suspended, pending investigation and review, must be borne in deference to the greater public interest served by the statutory restrictions. It was certainly never intended by the Fourteenth Amendment and the civil rights statute that all matters formerly within the exclusive cognizance of the states should become matters of national concern. A construction of the civil rights statute, such as that sought by the petitioner here, would find a violation of federal rights in every departure from local or state law by local or state officers. Every unauthorized or erroneous act by a policeman on his beat or the Registrar of Motor Vehicles in his office would result in a suit in the Federal Courts.

There is nothing in this case to indicate or suggest any wilful or malicious conduct on the part of the respondent. The most that can fairly be said is that the Registrar of Motor Vehicles of the Commonwealth of Massachusetts erred in suspending the motor vehicle license of the petitioner on the basis of the facts stated in the notice mailed from the respondent's office tc the petitioner, and in failing to reinstate the license upon the petitioner's application. Surely, all such errors or omissions by public officials within the several states are not to become the basis for actions for damages in the Federal Courts under the civil rights statute. If thousands upon thousands of licensees in the several states are to have actions for damages for every error of omission or commission by public officials in the granting, suspending, withholding or revoking of licenses, a flood of litigation would develop, resulting in the swamping of the Federal Courts with trivial and unimportant matters having little, if any, national significance. Surely, this Court will not permit such a chaotic and anomalous situation to develop in the United States.

II.

The Complaint Fails to Set Forth a Violation of Any Rights, Privileges or Immunities Secured by the Constitution.

The rights protected by the privileges and immunities clause of the Fourteenth Amendment are those incidental to citizenship of the United States as such, and not those derived from state law and belonging to a citizen by virtue of his state citizenship.

> *Slaughterhouse Cases,* 16 Wall. 36, 74; 21 L. Ed. 394.

The regulation of motor traffic upon the highways of a state is a matter primarily within the police power of the state.

> *Hendrick* v. *State of Maryland,* 235 U.S. 610; 35 S. Ct. 140; 59 L. Ed. 385.

The petitioner's license to operate a motor vehicle on the Massachusetts highways is derived in no way from his status as a citizen of the United States. It does not arise from his relationship to the federal government. It is not sufficient that it may have some indirect effect on his ability to exercise his right to travel freely from state to state, a right which does belong to him as a citizen of the United States.

> *Crandall* v. *State of Nevada,* 6 Wall. 35; 73 U.S. 35; 18 L. Ed. 744.

State regulation of motor travel on its highways has been held not to infringe that right.

Hendrick v. *State of Maryland, supra,* 235 U.S. 610, at 624; 35 S. Ct. 140, at 142, 143.

The petitioner argues in his brief (page 6) that "The right to operate a motor vehicle for one's livelihood is a right secured and protected by the Constitution of the United States." This Court, however, in the *Slaughter-house Cases, supra,* 16 Wall. 36, at 75, 76; 21 L. Ed. 394, refers to the discussion of Mr. Justice Washington in *Corfield* v. *Coryell,* 6 Fed. Cas. No. 3230, p. 546, of the nature of the rights which belong to citizens of a state as such. He included among these rights the fundamental "right to acquire and possess property of every kind and to pursue and obtain happiness and safety" (6 Fed. Cas. No. 3230, p. 551). The Supreme Court, approving that description, held that such rights derived from state citizenship and were not among the rights of United States citizens protected by the privileges and immunities clause of the Fourteenth Amendment.

III.

The Complaint Fails to Set Forth Any Deprivation of Life, Liberty or Property without Due Process of Law.

The petitioner has not been deprived of his property without due process of law, because a license to operate a motor vehicle is not a property right but merely a privilege granted by the state.

Commonwealth v. *Harris,* 278 Ky. 218; 128 S.W. (2d) 579.

Heart v. *Fletcher,* 184 Misc. 659; 53 N.Y.S. (2d) 369.

Commonwealth v. *Funk*, 323 Pa. 390; 186 Atl. 65.

LaPlante v. *State Board of Public Roads*, 47 R.I. 258; 131 Atl. 641.

Burgess v. *Mayor & Aldermen of Brockton*, 235 Mass. 95; 126 N.E. 456.

The complaint obviously contains no claim or suggestion of any deprivation of the life or of the liberty of the petitioner in the sense of freedom from imprisonment of the person. The case, however, does involve a "liberty" of the petitioner in the sense that the freedom to make use of one's own property, here a motor vehicle, as a means of getting about from place to place, whether for business or pleasure, is a liberty which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law. The respondent submits that in this case there was no deprivation of this liberty without due process of law. The Massachusetts statute, under which the respondent purported to act, General Laws (Ter. Ed.) c. 90, § 22, provides that the Registrar of Motor Vehicles "may suspend the license of any operator [of a motor vehicle] . . . in his discretion and without a hearing . . . whenever he has reason to believe that the holder thereof is an improper or incompetent person to operate motor vehicles, or is operating improperly or so as to endanger the public." The Registrar is required by this section to send a written notice to the licensee specifying the time and place of such improper operation. Section 28 of chapter 90 of the General Laws (as amended by chapter 536 of the Acts of 1950) provides a method of appeal from a decision of the Registrar to a Board of Appeal on motor vehicle liability. After exhausting such administrative remedies, the licensee may then, under the provisions of section 28 of

chapter 90, have a review of the decision of the board or of the Registrar by the Supreme Judicial or the Superior Court of the Commonwealth of Massachusetts.

The petitioner in this case followed the procedure as outlined in the statute, and the Supreme Judicial Court on May 29, 1952, ordered the respondent to restore the petitioner's license. It is well settled that the concept of due process of law does not necessarily require the granting of a hearing prior to the taking of official action in the exercise of the police power. When justified by compelling public interest, the Legislature may authorize summary action subject to later judicial review of its validity.

North American Cold Storage Co. v. *City of Chicago*, 211 U.S. 306; 29 S. Ct. 101; 53 L. Ed. 195.

Yakus v. *United States*, 321 U.S. 414, 442; 64 S. Ct. 660, 676; 88 L. Ed. 834.

The petitioner in his brief, on page 8, states:

"The Court then goes on and misquotes the plaintiff's claim. The Court stated that the essence of the plaintiff's claim seem to be that his license was suspended without a hearing. *This never was the plaintiff's claim.* The plaintiff has stated that the Registrar could not legally suspend his license for the reasons given in the notice of suspension. Therefore, it doesn't matter what the State can constitutionally do with respect to controlling operation of a motor vehicle after drinking intoxicating liquor. The fact is that in Massachusetts, driving after drinking is not forbidden. It is prohibited when the drinking influences the driving. Therefore, when the Supreme Court of Massachusetts properly declared that the Registrar was not justified in suspending the license of Wall, the Court

had in mind what is forbidden and not what can be forbidden."

The respondent submits that the petitioner's argument in this respect is based upon a misconception of what the United States Court of Appeals stated in its decision. What the Court said was: "The essence of the plaintiff's claim of denial of *due process* seems to be that his license was suspended by the registrar 'without a hearing.'" This certainly was one of the allegations of the petitioner's complaint. The petitioner, on the other hand, misquotes the language of the Supreme Court of Massachusetts when in paragraph 8 of his complaint he states that the Court held that the respondent "Did act arbitrarily and did not have reason to believe that the licensee was operating improperly . . ." What the Supreme Court of Massachusetts actually said in its opinion (329 Mass. at page 73) was: "*From the facts stated in the notice,* the registrar did not, in our opinion, have 'reason to believe' that the licensee was operating improperly on that date."

The petitioner's case is actually based upon the fact of a defective notice under section 22 of chapter 90 of the Massachusetts General Laws. It seems too clear for argument that the Commonwealth of Massachusetts could, consistently with the requirements of due process of law, have authorized the Registrar to suspend a license to operate a motor vehicle after a licensee had been drinking intoxicating liquor. This being true, it seems clear that the petitioner was not deprived by the state of any right or privilege secured by the Fourteenth Amendment. The Court of Appeals, the respondent submits, gave a complete answer to the petitioner's argument when it stated at the conclusion of its opinion (R. 19, 20):

> "It seems to us that the state, in promotion of highway safety, and in order to avoid close issues of fact

as to the extent of the 'influence' of intoxicating liquor in a particular case, might constitutionally write this rule of conduct into law. ['If you are going to drive, don't drink, and if you drink, don't drive.'] See *Jacob Ruppert* v. *Caffey*, 251 U.S. 264, 299 (1920). The state might have made it a misdemeanor to drive a car after taking a drink of intoxicating liquor. It might have enlarged the scope of G.L., c. 90, §22, so as to authorize the registrar to suspend a driver's license whenever he has reason to believe that the licensee operated a motor vehicle after drinking intoxicating liquor.

"The state legislation has not gone this far, but it constitutionally could. Therefore the deprivation of which the plaintiff complains, resulting from the action of the registrar taken in the name of the state, is not the deprivation of any right or privilege secured by the Fourteenth Amendment against state action."

IV.

The Complaint Fails to State a Case whereby the Plaintiff was Denied the Equal Protection of the Laws.

While the petitioner in his brief now states that he was discriminated against and that the respondent denied him the equal protection of the laws, there is certainly no such allegation in the petitioner's complaint. A reading of the complaint will reveal that it lacks any allegation that there was present in the action of the defendant any element of intentional or purposeful discrimination.

Snowden v. *Hughes*, 321 U.S. 1; 64 S. Ct. 397; 88 L. Ed. 497.

Both the District Court and the Circuit Court in their opinions state that the petitioner made no contention that

the respondent's action amounted to a denial of equal protection of the laws, and the cases make clear that such a claim would be unfounded.

Everlasting Development Corp. v. *Descartes* (C.A. 1st, 1951), 192 F. (2d) 1, 7; cert. den. (1952) 342 U.S. 954; 72 S. Ct. 626; 96 L. Ed. 709.

Conclusion.

The petition for a writ of certiorari should be denied.

Respectfully submitted,
JOHN J. BURNS,
Attorney for Respondent.

GEORGE FINGOLD,
Attorney General of the
Commonwealth of Massachusetts,

HENRY M. LEEN,
Special Assistant to the Attorney General of the
Commonwealth of Massachusetts,

Of Counsel.

Appendix.

(A) Opinion of the District Court.

109 Fed. Supp. 198 (1952).

United States District Court
District of Massachusetts

Civil Action
No. 52-812.

William F. Wall
v.
Rudolph F. King

Memorandum of Decision in re Defendant's Motion to Dismiss

December 29, 1952.

Ford, D.J.

Plaintiff brings this action under 8 U.S.C.A., § 43 to recover damages for an alleged deprivation of his constitutional rights. The complaint charges that the defendant King in his capacity as Registrar of Motor Vehicles of the Commonwealth of Massachusetts, on July 31, 1951, wrongfully suspended plaintiff's license to operate a motor vehicle on the highways of Massachusetts, and thereafter wrongfully denied plaintiff's application of August 9, 1951 for the reissuance of the license. The Supreme Judicial Court of Massachusetts has decided that the Registrar, who acted under the provisions of Mass. G.L. Ch. 90, § 22, was not in this case justified in suspending Wall's license, and held that Wall was entitled to have his license reissued.

Wall v. *Registrar of Motor Vehicles,* 1952 Mass. Adv. Sh. 615.

Defendant moves to dismiss for failure to state a claim upon which relief can be granted. His position is that even if his action in suspending the license and in refusing to reissue it was wrongful, plaintiff has failed to state a case under 8 U.S.C.A., § 43, because the loss of his license and, consequently, of his right to operate a motor vehicle on the highways of Massachusetts was not the deprivation of any right, privilege or immunity protected by that statute.

Plaintiff contends that the suspension of his license violated the Fourteenth Amendment, in that it abridged a privilege or immunity of a citizen of the United States, and deprived him of property without due process of law. He does not contend that defendant's action amounted to a denial of equal protection of the laws, and his complaint does not state such a claim since it lacks any allegation that there was present in the action of the defendant any element of intentional or purposeful discrimination. *Snowden* v. *Hughes,* 321 U.S. 1, 8.

The rights protected by the privileges and immunities clause of the Fourteenth Amendment are those incident to citizenship of the United States, as such, and not those derived from state law and belonging to a citizen by virtue of his state citizenship. *Slaughter-House Cases,* 16 Wall. (83 U.S.) 36, 74. The regulation of motor traffic upon the highways of a state is a matter primarily within the police power of the state. *Hendrick* v. *Maryland,* 235 U.S. 610. Plaintiff's license to operate motor vehicle on the Massachusetts highways is a privilege granted him by that state. It is derived in no way from his status as a citizen of the United States. It does not arise from his relationship to the federal government. It is not sufficient that it may have some indirect effect on his ability to exercise his right to travel freely from state to state, a right which

does belong to him as a citizen of the United States. *Crandall* v. *State of Nevada*, 6 Wall. (73 U.S. 35). State regulation of motor travel on its highways has been held not to infringe that right. *Hendrick* v. *Maryland*, supra, at p. 624.

Plaintiff argues that since, as he alleges, he was unable after the suspension of his license to follow his previous occupation of a salesman, he was thus deprived of his right to a livelihood and to the pursuit of happiness, rights which he argues arise from his United States citizenship. The Supreme Court in the *Slaughter-House Cases*, supra, at pp. 75, 76, refers to the discussion of Mr. Justice Washington in *Corfield* v. *Coryell*, Fed. Cas. No. 3,230, 6 Fed. Cases 546, of the nature of the rights which belong to citizens of a state as such. He included among these rights the fundamental * * * * right to acquire and possess property of every kind, and to pursue and obtain happiness and safety." (P. 551) The Supreme Court, approving of that description, held that such rights derived from state citizenship and were not among the rights of United States citizens protected by the privileges and immunities clause of the Fourteenth Amendment.

Plaintiff further contends that since the Registrar acted without giving him a hearing, he was deprived of property without due process of law. Plaintiff cites cases in which a license to engage in a specific occupation has been held to be a property right. But no case has been pointed out which holds that a license to operate a motor vehicle is property. There are, however, numerous cases in which it has been specifically held that such a license is not property within the meaning of the Fourteenth Amendment, but merely a privilege granted by the state. *Commonwealth* v. *Harris*, 278 Ky. 218, 128 S.W. (2d) 579; *Heart* v. *Fletcher*, 53 N.Y.S. (2d) 369; *Commonwealth* v. *Funk*, 323 Pa. 390, 186 A. 65; *LaPlante* v. *State Board of Public Roads*, 47 R.I.

258, 131 A. 641; *Rawson* v. *Department of Licenses*, 15 Wash. (2d) 364, 130 F. (2d) 876; *Nulter* v. *State Road Commission of West Virginia*, 119 W. Va. 312, 193 S.E. 549. The holding in *Burgess* v. *Mayor and Aldermen of Brockton*, 235 Mass. 95, although not precisely in point since it involved a license to operate a motor vehicle for hire, indicates that the same result would be reached by the Massachusetts courts. *Cf. Ullian* v. *Registrar of Motor Vehicles*, 325 Mass. 197, 199, where the court, although making a contrary assumption for the purposes of the case, called attention in a footnote to cases holding that a license to operate a motor vehicle was no more than a mere conditional privilege.

The conclusion must be that plaintiff has failed to state a claim upon which relief can be granted under 8 U.S.C.A., § 43.

Defendant's motion to dismiss is allowed.

(B) Opinion of The Massachusetts Supreme Judicial Court.

329 Mass. 70 (1952).

William F. Wall *vs.* Registrar of Motor Vehicles & others.

Williams, J. This is a petition for a writ of certiorari to quash certain orders of the registrar of motor vehicles and of the board of appeal established by G. L. (Ter. Ed.) c. 90, § 28, as appearing in St. 1950, c. 536.

The petitioner has appealed from a final judgment of the Superior Court by which the petition was dismissed "as matter of law."

The following facts were alleged in the petition. The petitioner's license to operate motor vehicles was suspended by the registrar without hearing on July 30, 1951, for the reason, as stated in the notice by the registrar to the petitioner, that "it has been reported officially to me that you operated a motor vehicle after drinking intoxicating liquor, on July 7, 1951, in Cambridge." On August 9, 1951, the petitioner applied to the registrar for a return of his license, which application was denied. "Thereafter" the petitioner appealed to the board of appeal from the action of the registrar "in denying a reissuance of his license." The appeal was heard on September 11, 1951, and on September 14, 1951, an order was entered by the board "affirming the decision of the registrar." It is prayed that a "writ of certiorari issue quashing the order of July 30, 1951, suspending the petitioner's license to operate a motor vehicle upon the public ways of this Commonwealth and quashing also the order of the board of appeal affirming the order of said registrar of July 30, 1951."

The return of the respondents, which is in the form of an answer, admits the above facts as stated. It was agreed by the parties that at the hearing before the board of appeal no evidence was offered by the petitioner, his only contention being that the decision of the registrar was erroneous as matter of law.

The registrar and the members of the board of appeal should not have been joined as respondents in a single petition. The "decision on appeal supersedes the first decision . . . and constitutes the final action of the administrative agency which alone is subject to judicial review." *Marshall* v. *Registrar of Motor Vehicles,* 324

Mass. 468, 469. The return, instead of being in the form of an answer, should have stated the proceedings of which review is sought. *Byfield* v. *Newton*, 247 Mass. 46, 52. As no point, however, has been made of these informalities of procedure, we consider the case on its merits. *Byfield* v. *Newton, supra,* at page 53.

By G. L. (Ter. Ed.) c. 90, § 22, as amended by St. 1933, c. 191, and St. 1941, c. 312, the registrar is given authority to suspend a license to operate motor vehicles without a hearing "whenever he has reason to believe that the holder thereof is an improper or incompetent person to operate motor vehicles, or is operating improperly or so as to endanger the public." Such license shall not be reissued "unless, upon examination or investigation, or after a hearing, the registrar determines that the operator should again be permitted to operate. . . . Upon the suspension or revocation of any license or registration the registrar shall forthwith send written notice thereof to the licensee or registrant as the case may be, and such notice, in case of the suspension of a license to operate a motor vehicle because of the improper operation thereof, shall specify the time and place of such improper operation." Under G. L. (Ter. Ed.) c. 90, § 28, as appearing in St. 1950, c. 536, a person aggrieved by a decision of the registrar may, within ten days thereafter, appeal from the decision to the board of appeal.

The cause for the suspension of the petitioner's license by the registrar was stated in the notice. This notice did not state that the holder of the license was an improper or incompetent person to operate motor vehicles or that the licensee did operate so as to endanger the public. It apparently referred to "improper operation" as that is the only reason for suspension respecting which the statute requires a statement in the notice of "time and place." Wide discretion is vested in the registrar as to the revoca-

tion or suspension of licenses of persons who operate motor vehicles on the public ways, but his discretion is not to be exercised arbitrarily or without regard to the purpose for which his authority to revoke or suspend is granted. The operation of a motor vehicle by one under the influence of intoxicating liquor is a criminal offence, G. L. (Ter. Ed.) c. 90, § 24 (1) (a), (b), as amended, and on conviction of such offence the revocation of the offender's license is required. Here no assertion of the operator's intoxication was stated in the registrar's notice. The intoxicating liquor alleged to have been consumed so far as it appears might have been of trivial amount, and have been taken at a time substantially earlier than the operation of the motor vehicle on July 7, 1951. From the facts stated in the notice, the registrar did not, in our opinion, have "reason to believe" that the licensee was operating improperly on that date. He was therefore not justified in suspending the petitioner's license.

The petitioner does not allege that an appeal was taken from the decision of the registrar suspending the license, although he prays that the order of July 30, 1951, and the order of the board of appeal affirming that order be quashed. He states that his appeal was from the decision of the registrar "denying a reissuance of . . . [the petitioner's] license."

There is nothing in the return to indicate that the decision of the registrar on the application for reissuance of the license and the affirmation of that decision by the board of appeal were based on any evidence or reason other than that stated in the notice of suspension. We think, therefore, that the petitioner is entitled to have his license reissued. The judgment of the Superior Court is reversed. Judgment is to be entered quashing the order of the board of appeal and ordering entry by that board of an order

annulling the decision of the registrar denying the application of the petitioner for reissuance of his license.

So ordered.

(C) General Laws of Massachusetts (Tercentenary Edition).

Chapter 90, Section 22.

"[*Suspension or Revocation of Certificates of Registration, Licenses, etc.*] The registrar may suspend or revoke any certificate of registration or any license issued under this chapter, after due hearing, for any cause which he may deem sufficient, and he may suspend the license of any operator or the certificate of registration of any motorcycle in his discretion and without a hearing, and may order the license or registration certificate to be delivered to him, whenever he has reason to believe that the holder thereof is an improper or incompetent person to operate motor vehicles, or is operating improperly or so as to endanger the public; and neither the certificate of registration nor the license shall be reissued unless, upon examination or investigation, or after a hearing, the registrar determines that the operator should again be permitted to operate. The registrar, under the same conditions and for the same causes, may also suspend the right of any person to operate motor vehicles in the commonwealth under section ten until he shall have received a license from the registrar.

"Upon the suspension or revocation of any license or registration the registrar shall forthwith send written notice thereof to the licensee or registrant as the case may be, and such notice, in case of the suspension of a license to operate a motor vehicle because of the improper operation thereof, shall specify the time and place of such improper

operation. Such notice mailed by the registrar or any person authorized by him to the last address as appearing on the registrar's records shall be deemed a sufficient notice and a certificate of the registrar, or of any person so authorized, that such notice has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein." (As inserted by St. 1933, c. 191, and amended by St. 1941, c. 312.)

"Upon the suspension of the right to operate a motor vehicle without a license of any person, the registrar shall forthwith send written notice thereof to such person and such notice mailed by the registrar or any person authorized by him to such person, to his last and usual place of abode shall be deemed a sufficient notice and a certificate as described in the preceding paragraph shall be likewise deemed prima facie evidence and shall be admissible in like manner in any court of the commonwealth." (As inserted by St. 1933, c. 191.)

Chapter 90, Section 28.

"[*Appeals and Hearings.*] Any person aggrieved by a ruling or decision of the registrar may, within ten days thereafter, appeal from such ruling or decision to the board of appeal on motor vehicle liability policies and bonds created by section eight A of chapter twenty-six, which board may, after a hearing, order such ruling or decision to be affirmed, modified or annulled; but no such appeal shall operate to stay any ruling or decision of the registrar. In the administration of the laws and regulations relative to motor vehicles, the registrar, or any person by him authorized, may summon witnesses in behalf of the commonwealth and may administer oaths and take testimony. The board

or the registrar may also cause depositions to be taken, and may order the production of books, papers, agreements and documents. Any person who swears or affirms falsely in regard to any matter or thing respecting which an oath or affirmation is required by the board or the registrar or by this chapter shall be deemed guilty of perjury. The fees for the attendance and travel of witnesses shall be the same as for witnesses in civil actions before the courts, and shall be paid by the commonwealth upon the certificate of the registrar filed with the comptroller. The supreme judicial or superior court may, upon the application of the board or the registrar, enforce all lawful orders of the board or the registrar under this section." (As amended by St. 1950, c. 536.)